

REMARKS

This Response is submitted in response to the Office Action dated March 10, 2004. At the outset, Applicants note that this application was filed in 2001. Since that time, four Office Actions have been issued by the Patent Office as well as an Appeal Brief filed by Applicants. Now, almost three years after the original filing date, and in a fifth Office Action, the Patent Office is requiring an election of species requirement! Applicants do not believe this is proper nor fair.

Moreover, the election of species requirement does not appear to comport with the Patent Office guidelines nor accomplish any purpose. In this regard, Applicants are to elect one emulsifier and one surfactant. Indeed, so ambiguous is the Office Action that the following statement is made "If additional ingredients are present, e.g., a solvent as recited in Claim 5, a specific example of the additional ingredients should be elected as well. If no additional ingredient is specifically elected, it will be presumed that no additional ingredient is presented in the elected composition."

Applicants respectfully request that the Patent Office point out where in the MPEP or any other manual or regulation the Patent Office is provided the authority to make this request. Essentially what the Patent Office is requiring Applicants to do is to elect a specific example from the specification which the Patent Office will then examine. This is not proper and has no basis in either the law or regulations.

A proper election of species requirement, as Applicants understand same, requires an Applicant to elect a species that is specifically claimed. Currently, the only species with respect to an emulsifier or surfactant that is claimed is with respect to a surfactant in Claims 2, 9, and 19. Why the Patent Office is requiring any election of species requirement in view of the fact that Applicants claim one species of a surfactant in three out of the 20 claims is not understood. The election of species requirement, Applicants respectfully submit, is so improper it is impossible for Applicants to respond to same.

If the Patent Office will not withdraw the election of species requirement, Applicants will cancel Claims 2, 9, and 19 rendering the election of species requirement moot as no specific surfactant or emulsifier will be claimed. Of course, such cancellation of the claims will be without prejudice or disclaimer and not for any purpose of patentability. However, Applicants respectfully request that this election of species requirement be withdrawn or that the Patent

Office elaborate on exactly what election is required. It is clearly not proper to require Applicants to "If additional ingredients are present..., a specific example of the additional ingredients should be elected." Applicants welcome the opportunity to discuss this matter with the Patent Office and therefore respectfully request that the Patent Office contact Applicants undersigned attorney if there should be any questions.

Respectfully submitted,

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